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367.40314X00

PAT 01606 US (NC 33543 US)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Tim MELLOW
Serial No.: 09/892,640
Filed: June 28, 2001
For: DUAL DIAPHRAGM SPEAKER
Art Unit: 2643
Examiner: Huyen D. Le

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RESPONSE TO ELECTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

December 17, 2003

Sir:

This is in response to the November 17, 2003 Election of Species Requirement.

Applicant elects with traverse claims 1-15 to be examined on the merits.

The Examiner's Election of Species Requirement is improper. An analysis of claims 1-15 reveals that they are the subcombination of the subject matter of claims 16-28. As such, an Election of Species is not proper between a combination and a subcombination as such an election of species is improper.

In accordance with M.P.E.P. §806.04(f) claims to be restricted to different species must be mutually exclusive.

Claim 1 recites a speaker comprising first and second diagrams arranged to be driven in opposite phase with respect to one another. Dependent claim 16, which is in Group II, recites an electronic device, including a speaker according to claim 1.

Accordingly, there is nothing mutually exclusive between the speaker of claim 1, which is a subcombination to the electronic device of claim 16, which includes a speaker according to claim 1. Accordingly, it is requested that the Examiner forthwith withdraw the Election of Species Requirement.

In view of the foregoing remarks, it is requested that the Examiner proceed with an examination on the merits of all claims.

To the extent necessary, Applicants petition for an extension of time under 37 C.F.R. §1.136. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 01-2135 (367.37314X00) and please credit any excess fees to such Deposit Account.

Respectfully submitted,



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DES:dlh